

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050724

1. ACTION REQUESTED/PURPOSE: Adopt a Resolution approving the issuance of Lee County Industrial Development Authority Private Activity Variable Rate Demand Revenue Bonds, Series 2005 (Shady Rest Care Pavilion, Inc. Project) for the benefit of Shady Rest Care Pavilion, Inc., a Florida not-for-profit corporation, in an initial aggregate principal amount not to exceed \$7,000,000.00 for the primary purposes of (i) financing the cost of the acquisition of the land and buildings related to a 180-bed skilled nursing facility located at 2310 North Airport Road, Fort Myers, Florida 33907 (the "Project"), and (ii) financing costs associated with the issuance of the Series 2005 Bonds.

2. WHAT ACTION ACCOMPLISHES: Provides Board consideration of proposed Industrial Development Authority Bonds as required by Internal Revenue Code and Florida Statutes. Board approval will authorize and adopt the approving Bond Issuance Resolution.

3. MANAGEMENT RECOMMENDATION: Approve the adoption of the Resolution with all stated terms and conditions.

4. Departmental Category: 12

C 12 D

5. Meeting Date:

05-31-2005

6. Agenda:

7. Requirement/Purpose: (specify)

8. Request Initiated:

<input checked="" type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	F.S. CH. 159
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	
<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Other	Sec. 147, IRC
<input type="checkbox"/> Walk-On		

Commissioner

Department County Attorney
Division
By: David M. Owen
County Attorney

9. Background: On May 13, 2005, Industrial Development Authority held a noticed public hearing and has adopted an inducement Resolution for the proposed issuance of Industrial Development Authority Private Activity Variable Rate Demand Revenue Bonds in an initial amount not to exceed \$7,000,000.00 for the primary purpose of (i) financing the cost of the acquisition of the land and buildings related to a 180-bed skilled nursing facility located at 2310 North Airport Road, Fort Myers, Florida 33907 (the "Project"), and (ii) financing costs associated with the issuance of the Series 2005 Bonds.

The Internal Revenue Code and Florida Statutes require the applicable elected body to approve the prospective bond financing for the project. The County Resolution approves the issuance of the Bonds and the Project. Section 3. of the County-approving Resolution provides that the Board's action is a limited approval, to include no financial obligation(s) on the Bonds.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				<i>5/19/05</i>	<i>RKS/19</i>	<i>6/19/05</i>	<i>5/19/05</i>	<i>5/19/05</i>	<i>5-19-05</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY CLERK
5/19/05
4:30 PM
5/19/05
5 PM

CO. ATTY'S
FORWARDED
TO CO. ADMIN.
4:18 PM

NABORS, GIBLIN & NICKERSON, P. A.

ATTORNEYS AT LAW
THE POINTE, SUITE 1060
2502 ROCKY POINT DRIVE
TAMPA, FLORIDA 33607

TELEPHONE (813) 281-2222
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1500 MAHAN DRIVE
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(850) 224-4070
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SUITE 500
37 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
(407) 426-7595
TELECOPY (407) 236-0430

May 17, 2005

VIA FEDERAL EXPRESS

David Owen, Esq.
Lee County Attorney
2115 Second Street
Fort Myers, Florida 33901

Dear Mr. Owen:

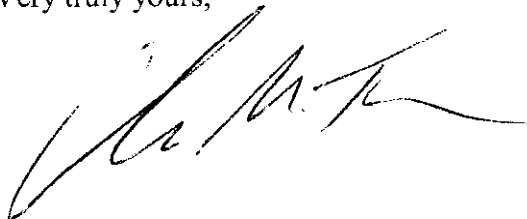
Attached please find a proposed resolution for consideration by the Board of County Commissioners at the Board's next meeting. Adoption of the resolution would provide the Board's limited approval to the issuance of not exceeding \$7,000,000 of Lee County Industrial Development Authority ~~Utility System~~ Revenue Bonds, Series 2005 (Shady Rest Care Pavilion, Inc. Project), in one or more series, pursuant to a plan of financing, for the benefit of Shady Rest Care Pavilion, Inc. As always, the approval of the County is extremely limited and is required by Section 147(f) of the Internal Revenue Code and Section 159.47(1)(i), Florida Statutes. In essence, these provisions provide that an elected public body must give its approval to the issuance of private activity bonds prior to their issuance. The Board's approval is given in accordance with Section 125.01(1)(z), Florida Statutes.

Section 3 of the Board's resolution makes it clear that the approval being given by the Board is limited and, importantly, that the Board is not incurring any liability as a result thereof. Please note that Section 11 of the Authority's Resolution adopted on May 13, which is attached as an Exhibit to the Board's resolution, also contains the same provision.

Please let us know whether or not it will be necessary to have any representatives from the Authority, the Company or their counsel present at the meeting. Also, please provide me with a certified copy of the adopted resolution.

Once again, thank you for your assistance in this matter.

Very truly yours,



CMT:lks
Attachment

RESOLUTION NO. 2005 -

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS PRIVATE ACTIVITY VARIABLE RATE DEMAND REVENUE BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,000,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED TO PROVIDE FUNDS TO MAKE A LOAN TO SHADY REST CARE PAVILION, INC. IN A PRINCIPAL AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF SAID BONDS FOR THE PRIMARY PURPOSES OF FINANCING THE ACQUISITION OF A SKILLED NURSING FACILITY LOCATED IN FORT MYERS, FLORIDA AND PAYING COSTS ASSOCIATED WITH THE ISSUANCE OF THE SERIES 2005 BONDS.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Lee County Industrial Development Authority (the "Authority") has submitted to the Board of County Commissioners of Lee County, Florida (the "County"), a copy of a resolution of the Authority adopted on May 13, 2005 (the "Authority Resolution"), granting its preliminary approval for the issuance by the Authority of its private activity variable rate demand revenue bonds (the "Series 2005 Bonds"), in one or more series in an aggregate principal amount not to exceed \$7,000,000 and a loan by the Authority to Shady Rest Care Pavilion, Inc., a Florida not-for-profit corporation (the "Borrower"), in a principal amount equal to the principal amount of the Series 2005 Bonds for the primary purposes of (i) financing the cost of the acquisition of the land and buildings related to a 180-bed skilled nursing facility located at 2310 North Airport Road, Fort Myers, Florida 33907 (the "Project"), and (ii) financing costs associated with the issuance of the Series 2005 Bonds. A copy of the Authority Resolution is attached hereto as Exhibit A.

B. On May 13, 2005, the Authority held a public hearing, which public hearing was duly conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project and to the issuance of the Series 2005 Bonds.

C. Pursuant to the Authority Resolution, the Authority has requested the County approve the issuance of the Series 2005 Bonds and the location and nature of the Project in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

D. The purposes of Part II, Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interests of the County that the issuance of the Series 2005 Bonds and the use of the proceeds thereof to finance the costs of the Project be approved by the Board of County Commissioners of the County (the "Board").

SECTION 2. APPROVAL OF ISSUANCE OF SERIES 2005 BONDS. The issuance of the Series 2005 Bonds and the use of the proceeds thereof to finance the costs of the Project as contemplated by the Authority Resolution be and hereby are approved in accordance with the provisions of the Code.

SECTION 3. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project and the Board shall not be construed by reason of its adoption of this resolution to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Series 2005 Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Series 2005 Bonds or the acquisition of the Project, and the Authority shall so provide in the financing documents setting forth the details of the Series 2005 Bonds. Finally, the County shall not be construed by reason of its adoption of this resolution to (i) attest to the Borrower's ability to repay the indebtedness represented by the Series 2005 Bonds, or (ii) a recommendation to prospective purchasers of the Series 2005 Bonds to purchase the same.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately.

ADOPTED this ____ day of May, 2005.

LEE COUNTY, FLORIDA

Chairman, Board of County Commissioners of
Lee County, Florida

ATTEST:

Clerk of the Circuit Court of Lee County
and ex-officio Clerk of the Board of County
Commissioners of Lee County, Florida

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

County Attorney

EXHIBIT A

AUTHORITY APPROVING RESOLUTION

RESOLUTION

AN INDUCEMENT RESOLUTION OF THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY REGARDING THE OFFICIAL ACTION OF THE AUTHORITY WITH RESPECT TO THE PROPOSED ISSUANCE OF VARIABLE RATE DEMAND REVENUE BONDS IN ONE OR MORE SERIES FOR THE PRINCIPAL PURPOSES OF FINANCING THE ACQUISITION OF A SKILLED NURSING FACILITY LOCATED IN FORT MYERS, FLORIDA AND PAYING COSTS ASSOCIATED WITH THE ISSUANCE OF THE SERIES 2005 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT BETWEEN THE AUTHORITY AND SHADY REST CARE PAVILION, INC.; PROVIDING FOR THE PRELIMINARY APPROVAL BY THE AUTHORITY FOR THE ISSUANCE OF NOT EXCEEDING \$7,000,000 OF SUCH BONDS IN ONE OR MORE SERIES; AND PROVIDING FOR CERTAIN RELATED MATTERS IN CONNECTION THEREWITH AND FOR AN EFFECTIVE DATE.

WHEREAS, Shady Rest Care Pavilion, Inc., a Florida not-for-profit corporation (the "Borrower"), has applied to the Lee County Industrial Development Authority (the "Authority"), to issue its private activity tax-exempt variable rate demand revenue bonds in one or more series and in an aggregate principal amount not to exceed \$7,000,000 (the "Series 2005 Bonds") for the principal purposes of (i) financing the cost of the acquisition of the land and buildings related to a 180-bed skilled nursing facility located at 2310 North Airport Road, Fort Myers, Florida 33907 (the "Project") by Shady Rest Care Pavilion, Inc. and its related entities (the "Borrowers"), and (ii) paying costs associated with the issuance of the Series 2005 Bonds (as defined below). The Borrowers currently operate the Project and lease the facility pursuant to a lease with Lee County, Florida (the "County"); and

WHEREAS, the Borrower has requested that the Authority loan the proceeds of the Series 2005 Bonds to said Borrower pursuant to Chapter 159, Parts II and III, Florida Statutes, and such other provision or provisions of Florida law as the Authority may determine advisable (the "Act") in order to accomplish the foregoing; and

WHEREAS, the bond resolution granting the final authority for the issuance of the Series 2005 Bonds has not yet been adopted by the Authority; and

WHEREAS, the issuance of the Series 2005 Bonds under the Act in one or more issues or series not exceeding an aggregate principal amount of \$7,000,000 and the loaning of the proceeds thereof to finance the costs of the Project under a loan agreement or other financing agreement which will provide that payments thereunder be at least sufficient to pay the principal of and interest and redemption premium, if any, on such Series 2005 Bonds and such other costs in connection therewith as may be incurred by the Authority, will assist the Borrower and promote the public purposes provided in the Act; and

WHEREAS, in order to satisfy certain requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Authority held a public hearing on the proposed issuance of the Series 2005 Bonds for the purposes herein stated on the date hereof, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in the County (a true and accurate copy of the affidavit of publication of such notice is attached hereto as Exhibit A), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Series 2005 Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of the County, such notice was reasonably designed to inform residents of the County of the proposed issue, stated that the Authority would be the issuer of the Series 2005 Bonds, stated the time and place of the hearing and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the Authority and provided sufficient time for interested persons to prepare for and to express their views at such hearing; and

WHEREAS, the Borrower has agreed to execute and deliver to the Authority the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Series 2005 Bonds, attached hereto as Exhibit B; and

WHEREAS, it is intended that this Resolution shall constitute official action toward the issuance of the Series 2005 Bonds within the meaning of the applicable United States Treasury Regulations and, specifically, to satisfy the requirements of Treasury Regulations Section 1.150-2 and to be a declaration of official intent under such Section; and

IT IS, THEREFORE, DETERMINED AND RESOLVED BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into to permit the Borrower to proceed with commitments for the Project, to incur costs in connection with various phases of the Project, to provide a limited expression of intention by the Authority, prior to the issuance of the Series 2005 Bonds, to issue and sell the Series 2005 Bonds and make the proceeds thereof available to finance all or part of the costs of the Project, all in accordance with and subject to the provisions of the Constitution and other laws of the State of Florida, including the Code and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement.

SECTION 3. APPROVAL OF THE PROJECT. The acquisition of the Project as described herein and in the notice of public hearing attached hereto as Exhibit A, and the financing thereof by the Authority through the issuance of the Series 2005 Bonds, pursuant to the Act, will promote the economic development and health and welfare of the citizens of the County, will provide the residents of the County with jobs, will promote the general economic structure of the County, will thereby serve the public purposes of the Act and is hereby preliminarily approved, subject, however, in all respects to the Borrowers meeting the conditions set forth in the Memorandum of Agreement to the sole satisfaction of the Authority.

SECTION 4. EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT. The Chairman or the Vice-Chairman and the Secretary are hereby authorized and directed to execute, for and on behalf of the Authority, the Memorandum of Agreement attached hereto as Exhibit B between the Authority and the Borrower providing understandings relative to the proposed issuance of the Series 2005 Bonds by the Authority to finance the costs of the Project in an initial aggregate principal amount not to exceed lesser of (a) \$7,000,000, or (b) the amount determined by the Authority and the Borrower to be necessary to accomplish the foregoing.

SECTION 5. AUTHORIZATION OF THE SERIES 2005 BONDS. There is hereby authorized to be issued and the Authority hereby determines to issue the Series 2005 Bonds, if so requested by the Borrower and subject to the conditions set forth in the Memorandum of Agreement attached hereto, in one or more issues or series of such tax-exempt revenue bonds in an aggregate principal amount not to exceed \$7,000,000 for the principal purpose of financing the costs of the Project as described

herein and in the Memorandum of Agreement and paying the costs associated with the issuance of the Series 2005 Bonds. The rate of interest payable on the Series 2005 Bonds shall not exceed the maximum rate permitted by law.

SECTION 6. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS. The Authority hereby recommends the issuance of the Series 2005 Bonds and the financing of the Project for approval to the Board of County Commissioners of the County (the "Board"). The Authority hereby directs the Chairman or Vice-Chairman, either alone or jointly, at the expense of the Borrower, to cooperate in seeking approval for the issuance of the Series 2005 Bonds and the financing of the Project by the Board as the applicable elected representatives of the County under and pursuant to the Act and Section 147(f) of the Code.

SECTION 7. APPOINTMENT OF BOND COUNSEL. The firm of Nabors, Giblin & Nickerson, P.A., Tampa, Florida, is hereby appointed by the Authority to act as bond counsel to the Authority and the County in connection with the issuance by the Authority of the Series 2005 Bonds.

SECTION 8. GENERAL AUTHORIZATION. The Chairman, the Vice-Chairman and the Secretary are hereby further authorized to proceed with the undertakings provided for herein and in the Memorandum of Agreement on the part of the Authority and are further authorized to take such steps and actions as may be required or necessary in order to cause the Authority to issue the Series 2005 Bonds subject in all respects to the terms and conditions set forth herein and in the Memorandum of Agreement.

SECTION 9. AFFIRMATIVE ACTION. This resolution is an affirmative action of the Authority toward the issuance of the Series 2005 Bonds, as contemplated in the Memorandum of Agreement, in accordance with the purposes of the laws of the State of Florida and the applicable United States Treasury Regulations.

SECTION 10. LIMITED OBLIGATIONS. The Series 2005 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the County, the State of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Authority and the Borrower prior to or contemporaneously with the issuance of the Series 2005 Bonds. The Authority has no taxing power.

SECTION 11. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other

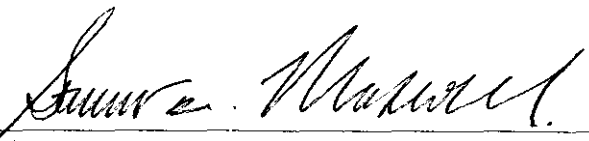
regulatory permits relating to the Project and the Authority shall not be construed by reason of its adoption of this Resolution to have waived any right of the County or estopping the County from asserting any rights or responsibilities it may have in that regard.

SECTION 12. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED this 13th day of May 2005.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)



Chairman

ATTEST:



Secretary

EXHIBIT A

**AFFIDAVIT OF PUBLICATION OF
NOTICE OF PUBLIC HEARING**

NEWS-PRESS

Published every morning - Daily and Sunday

Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared

Kathy Allebach

who on oath says that he/she is the

Legal Assistant

of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of

Hearing on May 13, 2005

In the court was published in said newspaper in the issues of

April 28, 2005

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

28th day of April 2005 by

Kathy Allebach

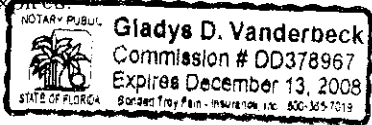
personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public

Print Name

My commission Expires



PUBLIC HEARING
The Lee County Industrial Development Authority (the "Authority") will hold a public hearing on May 13, 2005 at 11:00 A.M. or as soon thereafter as the matter can be heard, at the Authority's offices located at 12800 University Drive, Suite 300, Fort Myers, Florida to consider adoption of a resolution providing for the preliminary approval of the issuance by the Authority of not exceeding \$7,000,000 of its Variable Rate Demand Revenue Bonds, Series 2005 (Shady Rest Care Pavilion, Inc. Project) in one or more series (the "Series 2005 Bonds"). The Series 2005 Bonds will be issued for the principal purposes of (A) financing the cost of the acquisition of the land and buildings related to a 180-bed skilled nursing facility located at 2310 North Airport Road, Fort Myers, Florida 33907 (the "Project") by Shady Rest Care Pavilion, Inc., a not-for-profit Florida corporation, and its related entities (the "Borrower"), and (B) paying costs associated with the issuance of the Series 2005 Bonds. The Project will be owned and operated by the Borrower. The Series 2005 Bonds shall be payable solely from the revenues derived by the Authority from a loan agreement to be entered into by and between the Authority and the Borrower prior to the issuance of the Series 2005 Bonds. The interest on the Series 2005 Bonds shall not constitute an indebtedness or liability of the Authority or any political subdivision or agency thereof. The Series 2005 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax exempt status of the interest on all or a portion of the Series 2005 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Lee County Industrial Development Authority prior to the hearing at 12800 University Drive, Suite 300, Fort Myers, Florida 33907. Attention: Regina Smith.
ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE OR A PERSON DECIDE TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO SUCH HEARING OR MEETING, SHE MUST NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.
In accordance with the Americans with Disabilities Act, persons needing special accommodations for an interpreter to participate in this proceeding should contact the individual or agency publishing this notice no later than seven days prior to the proceeding at the address given in this notice, telephone (407) 339-1430.
By order of the Lee County Industrial Development Authority.
LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
/s/ Steve Maxwell
Chairman
April 28, 2005 No. 856866

EXHIBIT B

MEMORANDUM OF AGREEMENT FOR ISSUANCE OF PRIVATE ACTIVITY REVENUE BONDS

This Memorandum of Agreement (the "Agreement") is between the Lee County Industrial Development Authority, a public body corporate and politic (the "Authority") and Shady Rest Care Pavilion, Inc., a Florida not-for-profit corporation, (the "Borrower").

WITNESSETH:

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts II and III, Florida Statutes, (the "Act") provides that the Authority may issue tax-exempt revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds, to defray the cost of acquiring, by purchase or by construction, certain health care facilities.

(b) The Borrower is considering financing the cost of the acquisition of the land and buildings related to a 180-bed skilled nursing facility located at 2310 North Airport Road, Fort Myers, Florida 33907 (the "Project").

(c) The Authority intends this Agreement to constitute its official binding commitment, subject to the terms hereof, to issue its bonds (the "Series 2005 Bonds") in one or more series or issues pursuant to the Act in the amount to be agreed upon by the Authority and the Borrower and to loan the proceeds thereof to the Borrower, or to use such proceeds, to finance the costs of the Project, including all costs incurred in connection with the issuance of the Series 2005 Bonds by the Authority and the Borrower, up to an amount not to exceed \$7,000,000 initial aggregate principal amount.

(d) The Authority considers the issuance and sale of the Series 2005 Bonds, for the purposes hereinabove set forth, consistent with the objectives of the Act. This commitment is an affirmative official action of the Authority toward the issuance of the Series 2005 Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the Authority. Subject to the terms hereof, the Authority agrees as follows:

(a) Subject to the Borrower providing the Authority with sufficient evidence to enable the Authority to make the findings set forth in Section 159.29 of the Act, the Authority will authorize the issuance of the Series 2005 Bonds, in one or more series or

issues, in the aggregate principal amount necessary and sufficient to finance all or a portion of the costs of the Project, as the Authority and the Borrower shall agree in writing, but in all events, the principal amount of such Series 2005 Bonds shall not exceed the lesser of (i) the amount determined by the Authority and the Borrower necessary to accomplish the foregoing, or (ii) \$7,000,000.

(b) The Authority will cooperate with the Borrower and with the underwriters, placement agents or purchasers of the Series 2005 Bonds and the bond counsel of the Authority with respect to the issuance and sale of the Series 2005 Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the Authority and the Borrower for the authorization, issuance and sale of such Series 2005 Bonds and the use of the proceeds thereof to finance the costs of the Project.

(c) Such actions and documents may permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether pari passu with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the Project, or any segment thereof, or refunding of the Series 2005 Bonds.

(d) The loan agreement, bond indenture, master indenture, mortgage and other financing documents (collectively, the "Financing Agreements") between the Authority and the Borrower shall, under terms agreed upon by the parties, provide for payments to be made by the Borrower in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Series 2005 Bonds, as and when the same shall become due and payable.

(e) The Series 2005 Bonds shall specifically provide that they are payable solely from the revenues derived pursuant to the Financing Agreements between the Authority and the Borrower or other agreements approved by the Authority, except to the extent payable out of amounts attributable to Series 2005 Bond proceeds. The Series 2005 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of Lee County, Florida (the "County"), the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Series 2005 Bonds.

(f) Issuance of the Series 2005 Bonds by the Authority shall be contingent upon compliance with all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the ability of and desirability by the Authority to issue obligations to fund the costs of the Project and the approval thereof by the Authority and the Board of County Commissioners of the County in accordance with the provisions of Section 147(f) of the Code.

3. Undertakings on the Part of the Borrower. Subject to the terms hereof, the Borrower agrees as follows:

(a) The Borrower will use reasonable efforts to insure that the Series 2005 Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Series 2005 Bonds and the sale and delivery thereof shall be mutually satisfactory to the Authority and the Borrower.

(b) Prior to the issuance of the Series 2005 Bonds in the principal amount stated above, in one or more series or issues from time to time as the Authority and the Borrower shall agree in writing, the Borrower will enter into the Financing Agreements with the Authority, the terms of which shall be mutually agreeable to the Authority and Borrower, providing for the loan or use of the proceeds of the Series 2005 Bonds to finance the costs of the Project. Such Financing Agreements will provide that the Borrower will be obligated to pay the Authority (or the trustee for holders of the Series 2005 Bonds on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Series 2005 Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Series 2005 Bonds.

(c) The Borrower shall, in addition to paying the amounts set forth in the Financing Agreements, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

(d) To the extent not otherwise paid from Series 2005 Bond proceeds as part of the costs of the Project, the Borrower hereby agrees to pay all of the out of pocket expenses of officials and representatives of the Authority incurred in connection with the issuance of the Series 2005 Bonds and will pay all reasonable fees and expenses of the Authority in accordance with its guidelines, of Fowler, White, Boggs & Banker, P.A., Counsel to the Authority, and of Nabors, Giblin & Nickerson, P.A., Bond Counsel.

(e) The Borrower will hold the Authority and the County free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project.

(f) The Borrower agrees to indemnify and defend the Authority and the County and hold the Authority and the County harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the Project or the issuance of the Series 2005 Bonds and the Borrower's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the Authority and reasonable attorneys' and legal assistants' fees incurred in the enforcement of any

agreement of the Borrower contained herein. In the event that the Series 2005 Bonds are not issued and delivered, this indemnity shall survive the termination of this Agreement.

(g) The Borrower will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the Authority under Section 2 hereof and of the Borrower under Section 3 hereof are subject to the conditions that all of the following events shall have occurred not later than December 31, 2006 or such other date as shall be mutually satisfactory to the Authority and Borrower.

(a) The Authority shall be lawfully entitled to issue the Series 2005 Bonds as herein contemplated.

(b) The Authority and Borrower shall have agreed on mutually acceptable terms for the Series 2005 Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument or instruments in respect thereto and any Financing Agreements or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Borrower and to the Authority as to such matters with respect to the Series 2005 Bonds, the financing of the Project, the Financing Agreements and any other trust instrument or instruments, as shall be specified by the Borrower or the Authority, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Series 2005 Bonds.

(d) Compliance with all applicable provisions of Chapters 159, 189, 215 and 218, Florida Statutes, relating to the issuance of the Series 2005 Bonds, the interest rate thereon, the type of purchasers of the Series 2005 Bonds and the terms on which the Series 2005 Bonds may otherwise be issued.

(e) The Series 2005 Bonds shall be sold in a private placement to an institution or institutions or other investors acceptable to the Authority in principal amounts of not less than \$100,000 (unless otherwise agreed to in writing by the Authority) or, if sold publicly, shall be supported by such credit enhancement or other credit facility to result in the Series 2005 Bonds being rated investment grade by Standard & Poor's, Fitch Ratings or Moody's Investors Service.

If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, the Borrower agrees that it will annually reimburse the Authority

for all the reasonable and necessary direct or indirect expenses which the Authority may incur at the Borrower's request arising from the execution of this Agreement and the performance by the Authority of its obligations hereunder, including all reasonable legal fees for counsel to the Authority and expenses of bond counsel.

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the Authority and the Borrower shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Borrower whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 13th day of May 2005.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)

By: *Sandra Maxwell*
Chairman

ATTEST:

[Signature]
Secretary

SHADY REST CARE PAVILION, INC.

(CORPORATE SEAL)

By: *Walter R. [Signature]*
CEO/Administrator

ATTEST:

Jada M. Potts
Secretary CHIEF FINANCIAL OFFICER